IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5359 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHHOGARAM L RAWAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5359 of 1999

MR BAIJU JOSHI for Petitioner

MS NANDINI JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/07/2001

ORAL JUDGEMENT

What is challenged in this petition under Article 226 of the Constitution is the order dated 11.6.1999 passed by the District Magistrate, Vadodara dismissing the petitioner's appeal against the order dated 16.1.1999 passed by the Sub-Divisional Magistrate cancelling the petitioner's licence which was granted to the petitioner

under the Restaurants Registration Rules.

2. The petitioner was running a business in the name of Gayatri Lodging & Boarding House at Naswadi in Baroda District. The licence was renewed from time to time and the renewal was last granted till 31.12.1998 as per the renewal certificate at Annexure "A" to the petition. During the aforesaid period, an anonymous complaint dated 23.8.1998 was received against the petitioner and, therefore, the Mamlatdar, Naswadi made inquiries and submitted a report to the effect that the petitioner had not got the medical check-up of the employees; there was provision for toilets and bath-rooms for the staff, but there was no separate arrangement for their residence; the petitioner was not maintaining any register or issuing receipts for the payment of salary to the staff; the petitioner was employing children below the age of 10.

In view of the above, show cause notice dated 30.11.1998 (Annexure "C") was issued to the petitioner. The petitioner submitted his reply dated 18.12.1998 (Annexure "D"). The Sub-Divisional Magistrate passed order dated 16.1.1999 (Annexure "E") cancelling the licence on the ground that the irregularities alleged against the petitioner were proved. The petitioner's appeal came to be dismissed by the District Magistrate on the following grounds :-

(i) The petitioner was granted licence only to run the restaurant but the petitioner is also running the business of lodging and boarding over and above the restaurant without any such permission for lodging and boarding business.

(ii) The petitioner was not paying minimum wages and was violating the provisions of Minimum Wages Act, 1948.

(iii) The petitioner was also employing children below the age of 8 years.

That order dated 11.6.1999 (Annexure "F") is challenged in this petition.

3. Mr Baiju Joshi, learned counsel for the petitioner has submitted at the hearing today that -

(i) the show cause notice did not contain any allegation about the petitioner carrying on the business of lodging and boarding without licence,

but still the appellate authority has passed the order against the petitioner without giving the petitioner any opportunity to meet with the same. The petitioner was permitted to carry on the business of lodging and boarding for the last 15 years and, therefore, the petitioner should have been given an opportunity to submit an application to grant such permission/licence.

(ii) the petitioner was not committing the breach of the provisions of the Minimum Wages Act. The petitioner was paying minimum wages to the employees and the particulars of payment of minimum wages were incorporated in the note book maintained by the petitioner. The allegation about employing child labour has also been denied.

4. On the other hand, Ms Nandini Joshi, learned AGP appearing for the respondents has submitted that when the petitioner was running the lodging and boarding business while possessing only the licence for running a restaurant and when the petitioner was not maintaining any registers containing particulars about the employees and the wages paid to them, there is no ground for interfering with the impugned order. It is further submitted that the finding that the petitioner was employing child labour is also a finding of fact and, therefore also, no interference of this Court is warranted with regard to the impugned order.

It is also submitted by the learned AGP that even as per the statement made by the petitioner in para 11 of the petition, the petitioner is paying wages to the employees as per the rates prescribed by the Baroda Hotel Owners' Association.

In rejoinder, Mr Baiju Joshi for the petitioner states that the rates prescribed by the Baroda Hotel Owners' Association are in accordance with the provisions of the Minimum Wages Act, 1948.

5. Having heard the learned counsel for the parties, it appears from the orders of the Sub-Divisional Magistrate as well as the District Magistrate that on the one hand the petitioner was not given a reasonable opportunity to defend himself in as much as the impugned order came to be passed by the District Magistrate on a ground which was never disclosed in the show cause notice. Apart from that, the orders passed by the Sub-Divisional Magistrate and the District Magistrate

also do not show as to what material was produced by the petitioner before the authorities and why that material was not accepted by the authorities.

6. In view of the above, it would be just and proper to set aside the impugned order passed by the Sub-Divisional Magistrate on 16.1.1999 (Annexure "E") and order dated 11.6.1999 (Annexure "F") passed by the District Magistrate, Baroda cancelling the petitioner's registration to run the restaurant business and to direct the respondents to reconsider the matter after giving the petitioner a fresh show cause notice and granting the petitioner a reasonable opportunity to defend himself and thereafter consider the matter in accordance with law.

7. The petition is accordingly allowed in terms of the aforesaid directions. Rule is made absolute to the aforesaid extent with no order as to costs.

It is directed that in case any fresh show cause notice is issued to the petitioner, the petitioner shall cooperate for expeditious disposal of the inquiry.

Direct Service is permitted.

(M.S. Shah, J.)

sundar/-